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Income Tax (Amendment) Bill 2018

Overview

The Ministry of Finance (MOF) conducted a public consultation exercise from 20 June 2018 to 11 July 2018 on the draft Income Tax (Amendment) Bill 2018 (draft Bill 2018). Comments on the draft Bill 2018 will be considered by the MOF and, where appropriate, incorporated into the draft Bill prior to its introduction in Parliament for approval.

The draft Bill 2018 introduces legislative amendments to the Income Tax Act (ITA) arising from announcements made during Budget 2018 as well as other non-Budget updates.

Please refer to Deloitte Singapore's Budget 2018 Commentary for Budget 2018-related updates.

Key non-Budget 2018 updates relating to corporate income tax include:

1. Intellectual Property (IP) Development Incentive (IDI)

The IDI, first announced in Budget 2017, will be effective from 1 July 2018.

The incentive will be awarded to an approved company for an initial period of up to 10 years, subject to further extension of up to 10 years for each period of extension. The Singapore

Economic Development Board will be the relevant government agency in charge of approving the incentive.

A concessionary rate of tax will be levied for each Year of Assessment (YA) upon a percentage of "qualifying intellectual property income" of an approved company that is derived:

a) From a "qualifying intellectual property right" elected by the approved company for that YA; and
b) In whole or any part of a basis period for that YA that falls within the tax relief period applicable to the approved company.

The concessionary rate of tax is determined in accordance with the following formula:

$$A + B$$

where

- *A* is either 5% or 10% as approved; and
- *B* is a rate of increase of at least 0.5% for every 5-year period beginning with the third 5-year period and ending with the eighth 5-year period of the approved company's tax relief period.

For example, if a company is awarded the IDI for a 10-year period at an initial concessionary tax rate of 5% beginning 1 July 2018, the concessionary tax rate of 5% will apply throughout the period from 1 July 2018 to 30 June 2028. Subsequently, where the IDI is being extended for another 10-year period with a specified rate of increase of 0.5%, the concessionary tax rate of 5.5% will be applied for the period from 1 July 2028 to 30 June 2033 (i.e., the third 5-year period) and 6% will be applied for the period from 1 July 2033 to 30 June 2038.

However, the regulations for the IDI have yet to be prescribed. As such, the definition of "qualifying intellectual property income", "qualifying intellectual property rights" and the method for determining the percentage of qualifying intellectual property income of an approved company remains to be seen; however, they should largely be aligned with the modified nexus approach recommended by the Organisation of Economic Co-operation and Development (OECD) without any significant changes or modifications.

2. Tax treatment arising from adoption of various Financial Reporting Standards (FRS):

a) FRS 109—Financial Instruments

   The draft Bill 2018 clarifies that loss provisions on loans and securities made by banks and qualifying finance companies will rank for tax deduction, subject to prescribed limits, if such provisions are:

- Made pursuant to the adoption of FRS 109 (which is effective for accounting periods beginning on or after 1 January 2018) on loans and securities that are not credit impaired; and/or
- Required so as to meet the minimum allowances that such entities are required to maintain pursuant to requirements mandated by the Monetary Authority of Singapore.

b) FRS 115—Revenue from Contracts with Customers

An entity applying FRS 115 may be required to adjust its revenue amount in its financial accounts for previous basis periods. If the income assessed for a past YA is different from the amount that would have been computed had the Comptroller of Income Tax used an amount of profit that included the adjusted revenue amount as the starting point for the computation, the excess amount is treated as an amount that is:

- Income chargeable to tax;
- To be deducted from the amount of exempt income; or
- Allowable as a deduction.

This amount is taxable or deductible in the YA of the basis period in which FRS 115 is first applied. For taxpayers whose income is subject to tax at rate(s) other than 17%, specific provisions have been introduced in the Income Tax (Amendment) Act 2017 to govern the apportionment of the amount to the various tax rate categories. The draft Bill 2018 provides additional clarification in situations where such taxpayers may suffer an adjusted loss in a particular tax rate category. This amendment will take effect from 26 October 2017.

c) FRS 116—Leases

Broadly, FRS 116 applies to all leases, including leases of Right-of-Use assets in a sublease, and is effective for entities with annual reporting periods beginning on or after 1 January 2019. When effective, FRS 116 will supersede the following accounting standards:

- FRS 17—Leases;

- INT FRS 104—Determining whether an Arrangement contains a lease;
- INT FRS 15—Operating Leases—Incentives; and
- INT FRS 27—Evaluating the Substance of Transactions involving the Legal Form of a Lease.

The existing tax treatment for leases would continue to apply following the adoption of FRS 116. This is in line with the proposed position by the Inland Revenue Authority of Singapore (IRAS) in a public consultation held in August 2017. Amongst others, the claim for tax deduction by lessees under the existing tax treatment is based on contractual lease payments insofar as the lease is not regarded as a "finance lease treated as a sale" for tax purposes. Tax adjustments are likely to be required as the quantum of contractual lease payments would, in most instances, differ from the accounting charge to the Profit and Loss statement under FRS 116.

Notwithstanding any FRS 116 accounting treatment, the draft Bill 2018 also seeks to clarify the tax treatment arising from the adoption of FRS 116 for the following:

- For finance leases treated as a sale (as governed by regulations under section 10D of the ITA), it is now expressly provided, to avoid doubt, that the part of any payment that is not attributable to repayment of the principal is considered to be the income of the lessor.
- In relation to Singapore withholding tax obligations for lease payments made to non-Singapore residents, it is now expressly provided that the payment made by the lessee under a finance lease treated as a sale that is considered income of the lessor is to be regarded as payments of interest. As a corollary, payments made by a lessee to a lessor under a finance lease that is not treated as a sale should be regarded as rental payments.

3. Tax framework for inward re-domiciliation

The tax regime for inward re-domiciliation will be extended to a re-domiciled company that carried on a trade or business in Singapore before its registration date. This will include Singapore branches of a foreign company or permanent establishment in Singapore that carried on a trade or business in Singapore. However, the extension of the tax treatment will only apply in respect of the re-domiciled company's trade or business carried on outside Singapore before the registration date. Consequential changes were made to Section 34G of the

ITA to prescribe the tax treatment in relation to the portion on that foreign trade or business carried on by the re-domiciled company.

These changes will be effective from 26 October 2017, which is the date of gazette of Income Tax (Amendment) Act 2017.

4. Income tax treatment of foreign exchange gains or losses for businesses

Under general tax principles, revenue foreign exchange differences are taxable or deductible only upon physical conversion (i.e., when they are realised). However, by way of an administrative concession, revenue foreign exchange gains or losses will be taxed or allowed a deduction, as the case may be, even when such revenue foreign exchange gains or losses are unrealised. This administrative concession applies automatically to all businesses other than banks with effect from YA 2004, unless taxpayers opted out of the administrative concession. Opting out is an irrevocable decision and taxpayer will continue to remain on a realisation principle in relation to the revenue foreign exchange differences.

The draft Bill 2018 introduces a provision to legislate the treatment accorded under the aforementioned administrative concession. Taxpayers, who have previously elected to be taxed on a realised basis for the revenue foreign exchange differences in the YA 2004 income tax return, may make an irrevocable election to be under this tax treatment in the year that the taxpayers make the election and any subsequent YAs.

5. Implementation of local filing mechanisms for filing of Country-by-Country Reports

Local (or secondary) filing, in the context of Country-by-Country (CbC) reporting, refers to when each jurisdiction may require a CbC report from any constituent entity of a multinational enterprise (MNE) group that is tax resident in that jurisdiction if, the ultimate parent is not obligated to file CbC report, or the jurisdiction of the ultimate parent does not have an Exchange of Information (EOI) agreement in place, or a systemic failure under the EOI agreement. For example, if a MNE is headquartered in Country X and has a subsidiary in Singapore; and Singapore has a local filing requirement, then the Singapore subsidiary may be required to file a CbC report to the Singapore tax authority if the Singapore tax authority is unable to obtain the report via automatic exchange with the tax authority of Country X.

Local filing does not form part of the minimum requirement under Action 13. However, in the e-Tax Guide *Country-by-Country Reporting (Second Edition)* first issued by the IRAS on

10 October 2016, Singapore has signalled its intention to provide for secondary mechanism on Singapore subsidiaries of foreign MNEs in Singapore's CbC reporting legislation.

The draft Bill 2018 now enables regulations to be prescribed to require a "prescribed person" or a permanent establishment in Singapore to file a CbC report or its equivalent in "prescribed circumstances". It is expected that the "prescribed circumstances" will be in line with OECD's CbC Reporting Guidelines. With this, the scope of the CbC reporting requirement in Singapore would potentially be expanded significantly.

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